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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,494	07/22/2002	Wataru Nakazawa		4851

22428 7590 09/22/2005

FOLEY AND LARDNER  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/064,494

Applicant(s)

NAKAZAWA, WATARU

Examiner

Michelle (Shelley) Clement

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*me*

*AK*

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as necessitated by applicant's amendments.

### ***Claim Rejections - 35 USC § 112***

2. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a structure for attaching a fabric sheet to a vehicle body, the structure including a spacer wherein the spacer is EITHER configure to rotate within the hole of the fabric sheet OR the spacer including a tacking member for tacking the spacer to the vehicle body, does not reasonably provide enablement for the spacer configured to rotate within the hole AND including a tacking member. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims. It is not clear how the spacer can both rotate in the hole and be tacked down, applicant has disclosed the two as separate embodiments but it is not clear how they could work together as would be required since claim 4 depends from and includes all the limitations of claim 1. If the spacer body includes the tacking member, it could not rotate within the hole.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scalise (US Patent # 5,362,187) and Nanbu (US Patent # 6,616,178). Scalise discloses an attaching structure comprising a spacer, the spacer having a cylindrical portion for receiving a threaded fastener, an end of the spacer can be in contact with a vehicle body and another end of the spacer is provided with a flange. Scalise discloses the attaching structure can be used for attaching a fabric sheet to a vehicle body (column 1, line 14) by inserting a threaded fastener through a hole of the fabric sheet. The flange is integrally formed with the cylindrical portion, the spacer includes a spacer rear body in contact with a fixed substrate that could be a vehicle body and a spacer front body to be connected with the spacer rear body, the spacer front body includes the flange, and the spacer rear body includes an enlarged portion larger than the hole of the fabric sheet, the enlarged portion being located between the vehicle body and the fabric sheet. The figures clearly show a clearance between the spacer and the hole of the fabric sheet, which would allow the spacer to rotate within the hole of the fabric sheet. It is noted that limitations as to the method in which the structure is are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

Although Scalise does not expressly disclose the attaching structure in combination with an airbag including a fabric sheet, the hole located in an edge portion of an airbag that is intended to protect a vehicle occupant's head, Nanbu does. Nanbu teaches a head protective airbag including a fabric sheet, the sheet attached to a vehicle body by inserting a fastener through a hole of the sheet (reference 5) and through the vehicle body (column 3, lines 35-45). Scalise and Nanbu are analogous art because they are from similar problem solving areas: fastening fabric sheets to vehicle bodies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the fastener as taught by Scalise with the protective bag as taught by Nanbu. The suggestion/motivation for doing so would have been to utilize an effective fastener to fasten the airbag to the vehicle.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M. Chivers", is located in the lower right quadrant of the page.